

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Provision of Directory Listing Information)	CC Docket No. 99-273
under the Communications Act of 1934, as)	
Amended)	
)	
To: the Commission)	

REPLY COMMENTS OF INFONXX, INC.

In its initial petition, InfoNXX, Inc. requested the Commission clarify one narrow aspect of its *Directory Listings Reconsideration Order (Order)*¹ — namely, to state that emergency services represent the only directory assistance (DA) service offering for which ILECs may use the nonpublished numbers that have been declared off-limits to competing DA providers.² This limited clarification is necessary to ensure that ILECs will not invoke the *Order* to expand upon the Commission’s narrow exception to the general principle of nondiscriminatory access, which holds that competing DA providers must “have access to DA equal to that which LECs provide to themselves.”³ Accordingly, InfoNXX’s request for clarification is both narrowly targeted and procedurally proper — a position supported by the fact that BellSouth “does not object to such a clarification” (though it believes it unnecessary).⁴ InfoNXX, however, does believe that clarification is necessary to promote market competition by ensuring that

¹ Order on Reconsideration, *Provision of Directory Listing Information under the Communications Act of 1934, as Amended*, CC Docket No. 99-273, FCC 05-93, (rel. May 3, 2005) (*Directory Listings Reconsideration Order*). InfoNXX also recognizes that nonpublished numbers (as opposed to unlisted numbers) are at issue in this proceeding.

² Petition for Clarification or, in the Alternative, Reconsideration of InfoNXX, Inc., CC Docket 99-273, at 2 (Sept. 16, 2005) (*InfoNXX Petition*).

³ *Directory Listings Reconsideration Order* at ¶ 2.

⁴ Opposition of BellSouth Corporation, CC Docket No. 99-273, at 6-7 (Nov. 17, 2005) (*BellSouth Comments*).

ILECs will not differentiate their DA services as a result of their superior access to the nonpublished numbers denied to competing DA providers.

I. THE COMMISSION SHOULD GRANT INFONXX'S REQUEST FOR CLARIFICATION

A. The Request for Clarification is Procedurally Proper

Contrary to Qwest's assertions, InfoNXX's petition for clarification does not seek a new rule.⁵ Rather, the petition seeks only to clarify that the *Order's* exception to nondiscriminatory access is a narrow one and that ILECs should not presume that the exception extends to any DA service offering beyond that which the Commission has specifically carved out. As such, the request for clarification is clearly within the parameters of the *Order*.

As InfoNXX explained in detail in its initial petition, both Section 251(b)(3) and Commission policy mandate nondiscriminatory access to DA information.⁶ In fact, the Commission has upheld the principle of nondiscriminatory access repeatedly and in a number of contexts⁷ — most recently in the *Order*. The rationale of nondiscriminatory access is to prevent ILECs from claiming a competitive advantage for their DA services because of their ability to deny competing DA providers equal access to DA information. Nondiscriminatory access is thus necessary to promote and protect market competition.

⁵ Qwest's Opposition to InfoNXX Petition for Clarification or Reconsideration, CC Docket No. 99-273, at 4 (Nov. 17, 2005) (*Qwest Comments*).

⁶ *InfoNXX Petition* at 4-5.

⁷ *Id.* at 5.

The Commission's decision to allow ILECs to block access to nonpublished numbers that they — by their own admissions in these comments⁸ — provide as a part of their DA services fundamentally contradicts both the statute and the Commission's general policy of nondiscriminatory access. As the comments make clear, customers using ILECs' DA services can obtain greater benefits than customers of competing providers in the context of emergency requests.⁹

While InfoNXX respectfully disagrees with this aspect of the Commission's decision, its petition seeks only to clarify that this exception to the principle of nondiscriminatory access should be understood by all to be limited to the express terms of the *Order*. As such, InfoNXX is not seeking a new rule or the imposition of new conditions on ILECs. Rather, the clarification is necessary to put all parties on notice that discrimination in this particular context does not justify discrimination in other DA uses.

B. The Request for Clarification is a Narrow One

In addition to being procedurally proper, InfoNXX's petition for clarification is also a narrow one that is focused specifically on DA service offerings. The Commission should therefore disregard the alleged parade of horrors that some commenters claim would result from granting this limited request for clarification.¹⁰

⁸ See Comments of the Verizon Telephone Companies, CC Docket No. 99-273, at 2 (Nov. 17, 2005) (*Verizon Comments*); *BellSouth Comments* at 7. BellSouth and Verizon attempt to argue that there is no discrimination in this context because their operators (who lack immediate access to nonpublished numbers) must pass emergency DA requests on to their supervisors (who presumably do have immediate access) for processing. This argument is unconvincing. Even assuming the operators lack access, the more relevant point is that the ILECs' DA services *as a whole* can and do provide emergency services that competing providers cannot. If permitted to do so, InfoNXX (and presumably other independent DA providers) would handle calls in exactly the same manner, by using supervisors to ensure privacy and quality control.

⁹ *Id.*

¹⁰ *Qwest Comments* at 2.

The issue in this proceeding is promoting and protecting competition in the DA market. Indeed, the specific focus of both Section 251(b)(3) and nondiscriminatory access more generally is the DA market. Accordingly, InfoNXX's concern is limited to the ILECs' ability to use discriminatory access to differentiate their DA service offerings and to frustrate competition solely because of information gained as a result of their monopoly power. For reasons noted above, InfoNXX seeks clarification that the emergency services represent the only acceptable DA service offering for which ILECs can use the nonpublished numbers that they deny to competing DA providers.

Contrary to Qwest's assertions, such a clarification is not so broad that it would affect non-DA services such as E-9-1-1, billing and collection, or other standard customer care practices and communications.¹¹ Rather, the clarification is necessary to ensure that nonpublished numbers are not used to provide DA services other than those that the Commission has already enumerated. To the extent that InfoNXX's original petition stated the issue more broadly, we emphasize that the clarification request is narrowly targeted to the use of such numbers in a DA context, which includes the providing of directory listing and related information and call-connect services.

C. The Request for Clarification is Reasonable and in the Public Interest

We note with approval BellSouth's formulation of the question, and their non-opposition to the request, though they find it unnecessary:

Another possible reading of InfoNXX's petition is that InfoNXX is asking the Commission to clarify that LECs should be able to use non-published numbers only for the narrow purpose of providing emergency contact services. To the extent that InfoNXX is making this request,

¹¹ *Id.*

BellSouth does not object to such a clarification (although it does not believe that such a clarification is necessary).¹²

We are pleased that BellSouth does not object to this request, but we do believe that clarification is necessary. The ILECs' history of withholding numbers and other discrimination in this area teaches that clarity and certainty are essential to avoid regulatory issues and promote marketplace competition.

Furthermore, if the Commission is truly concerned about the privacy of customers with nonpublished numbers, it should be *more* inclined to grant InfoNXX's request for clarification. By limiting the use of nonpublished numbers to emergency services, the Commission would ensure that ILECs would not disturb these customers' privacy by using their numbers for collateral purposes that benefit the ILECs financially. Although Qwest's comments are not entirely clear on this point, they arguably suggest that Qwest intends to use the numbers to market their own services. We understood the Commission's exception to nondiscriminatory access to be motivated by privacy concerns, and not to facilitate marketing operations, and so we urge the Commission to clarify the permitted uses of such numbers in a DA context.

¹² *BellSouth Comments* at 6-7.

CONCLUSION

The Commission should clarify that emergency services constitute the only acceptable DA service offering for which LECs may use nonpublished numbers denied to competing providers. This limited clarification is necessary to ensure that the principle of nondiscriminatory access will continue to be respected and will continue to protect and promote competition in the DA market.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Blevins, hereby certify that on this 28th day of November, 2005, I caused copies of the foregoing Reply Comments of InfoNXX, Inc. to be served by electronic mail, with hard copies to follow on November 29, 2005 by first class mail (postage prepaid), on:

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